



BILLING CODE 6345-03

OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2641

RIN 3209-AA44

Post-Employment Conflict of Interest Restrictions; Departmental Component

Designations

AGENCY: Office of Government Ethics.

ACTION: Proposed rule.

SUMMARY: The U.S. Office of Government Ethics (OGE) is issuing a proposed rule to revise the component designations of three agencies for purposes of the one-year post-employment conflict of interest restriction for senior employees. Specifically, based on the recommendations of the agencies concerned, OGE is proposing to designate two new components in appendix B to 5 CFR part 2641, and to correct an inadvertent error in the current appendix B listing of a previously-designated component.

DATES: Written comments are invited and must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: You may submit comments, in writing, to OGE on this proposed rule, identified by RIN 3209-AA44, by any of the following methods:

Email: usage@oge.gov. Include the reference “Proposed Rule Revising Departmental Component Designations” in the subject line of the message.

Fax: (202) 482-9237.

Mail/Hand Delivery/Courier: Office of Government Ethics, Suite 500, 1201 New York Avenue, NW, Washington, DC 20005-3917, Attention: “Proposed Rule Revising Departmental Component Designations.”

Instructions: All submissions must include OGE's agency name and the Regulation Identifier Number (RIN), 3209-AA44, for this proposed rulemaking. All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Comments may be posted on OGE's website, www.oge.gov. Sensitive personal information, such as account numbers or Social Security numbers, should not be included. Comments generally will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: Kimberly L. Sikora Panza, Associate Counsel, Office of Government Ethics, Suite 500, 1201 New York Avenue NW, Washington, DC 20005-3917; Telephone: (202) 482-9300; TTY: (800) 877-8339; FAX: (202) 482-9237.

SUPPLEMENTARY INFORMATION:

I. Substantive Discussion; Correction to Existing Component Designation and Addition of Two New Departmental Components

The Director of OGE (Director) is authorized to designate distinct and separate departmental or agency components in the executive branch for purposes of 18 U.S.C. 207(c), the one-year post-employment conflict of interest restriction for senior employees. 18 U.S.C. 207(h). Component designations do not apply to persons employed at a rate of pay specified in or fixed according to subchapter II of 5 U.S.C. chapter 53 (the Executive Schedule). 18 U.S.C. 207(h)(2). Component designations are listed in appendix B to 5 CFR part 2641.

The representational bar of 18 U.S.C. 207(c) usually extends to the whole of any department or agency in which a former senior employee served in any capacity during

the year prior to termination from a senior employee position. However, 18 U.S.C. 207(h) provides that whenever the Director determines that an agency or bureau within a department or agency in the executive branch exercises functions which are distinct and separate from the remaining functions of the department or agency and there exists no potential for use of undue influence or unfair advantage based on past Government service, the Director shall by rule designate such agency or bureau as a separate component of that department or agency. As a result, a former senior employee who served in a “parent” department or agency is not barred by 18 U.S.C. 207(c) from making communications to or appearances before any employees of any designated component of that parent, but is barred as to employees of that parent or of other components that have not been separately designated. Likewise, a former senior employee who served in a designated component of a parent department or agency is barred from communicating to or making an appearance before any employee of that component, but is not barred as to any employee of the parent, of another designated component, or of any other agency or bureau of the parent that has not been designated.

The Director regularly reviews the component designations listed in appendix B to part 2641, and in consultation with the department or agency concerned makes such additions and deletions as are necessary. Specifically, the Director “shall, by rule, make or revoke a component designation after considering the recommendation of the designated agency ethics official.” 5 CFR 2641.302(e)(3). Before designating an agency component as distinct and separate for purposes of 18 U.S.C. 207(c), the Director must find that there exists no potential for use of undue influence or unfair advantage based on past Government service, and that the component is an agency or bureau within a parent

agency that exercises functions which are distinct and separate from the functions of the parent agency and from the functions of other components of that parent. 5 CFR 2641.302(c).

Pursuant to the procedures prescribed in 5 CFR 2641.302(e), three agencies have forwarded written requests to OGE to amend their listings in appendix B to part 2641. After carefully reviewing the requested changes in light of the criteria in 18 U.S.C. 207(h) as implemented in 5 CFR 2641.302(c), OGE is proposing to grant these requests and amend appendix B as explained below.

Department of the Treasury

The Department of the Treasury (Treasury) informed OGE that appendix B to part 2641 misstates the name of one of its long-designated agency components. Specifically, appendix B lists “Financial Crimes Enforcement Center (FinCEN)” as a Treasury component, but the name of the component that goes by the acronym FinCEN is, and always has been, Financial Crimes Enforcement Network. Although the full name of FinCEN was stated properly when the component was first designated and added to appendix B, see 68 FR 4681 (Jan. 30, 2003), it appears that through an inadvertent error subsequent Federal Register notices (and accordingly, CFR publications) listed the name of the component incorrectly in appendix B as “Financial Crimes Enforcement Center” – see, e.g., 68 FR 7884 (Feb. 18, 2003), 73 FR 36168 (June 25, 2008), 79 FR 71955 (Dec. 4, 2014). To appropriately resolve this situation, OGE proposes to make a technical correction to the Department of the Treasury listing in appendix B to part 2641 by deleting the word “Center” from the component listed as “Financial Crimes Enforcement

Center (FinCEN) (effective January 30, 2003)” and replacing it with the word “Network”.

Department of Labor

The Department of Labor has requested that OGE designate Veterans’ Employment and Training Service in appendix B to part 2641 as a distinct and separate component of the Department of Labor for purposes of 18 U.S.C. 207(c). The Veterans’ Education and Employment Assistance Act of 1976, Public Law 94-502, established within the Department of Labor a Deputy Assistant Secretary of Labor for Veterans’ Employment, whose role was to be the principal advisor to the Secretary of Labor with respect to the formulation and implementation of all departmental policies and procedures to carry out employment, unemployment, and training programs at the Department of Labor relating to veterans. In October 1980, Public Law 96-466 elevated the Deputy Assistant Secretary of Labor for Veterans’ Employment to an Assistant Secretary position, and Secretary of Labor’s Order No. 5-81, issued in December 1981, established the Office of the Assistant Secretary for Veterans’ Employment and Training (OASVET). In March 1983, Secretary of Labor’s Order No. 4-83 redesignated OASVET as the Veterans’ Employment and Training Service (VETS) and updated the Assistant Secretary title to be Assistant Secretary of Labor for Veterans’ Employment and Training.

VETS was created to give policy-level considerations to the unique needs and challenges of veterans. The office works to improve employment, training, and other workforce scenarios for veterans through a variety of avenues, including job counseling service programs, employment placement service programs, and job training placement

service programs. In addition, VETS safeguards the employment rights of veterans and US service members and protects them from employment discrimination or retaliation on the basis of military service by enforcing the Uniform Services Employment and Reemployment Rights Act, 38 U.S.C. 4301-4335. According to the Department of Labor, the functions of VETS are distinct and separate from every other agency within the Department. The office was created by a discrete authority that is separate from the organic statute for the Department of Labor; has been explicitly delegated distinct responsibilities relating to veterans' training and employment; exercises distinct and separate functions to implement and enforce distinct and separate laws and programs related to veterans; is headed by an Assistant Secretary who reports directly to the Secretary of Labor; and is relatively the same size as other components designated by the Department of Labor in appendix B to part 2641. Given the manner in which VETS works independently from other component agencies and the general management of the Department of Labor, there exists no potential for the use of undue influence or unfair advantage based on past Government service.

Accordingly, OGE is proposing to grant the request of the Department of Labor and amend the agency's listing in appendix B to part 2641 to add VETS as a new component for purposes of 18 U.S.C. 207(c).

Department of Commerce

The Department of Commerce has requested that OGE designate the Bureau of Economic Analysis (BEA) as a distinct and separate component of the Department of Commerce for purposes of 18 U.S.C. 207(c). The mission of BEA is to promote a better understanding of the U.S. economy by providing timely, relevant, and accurate economic

accounts data, including reports about gross domestic product, and data concerning personal income, corporate profits, and Government spending. Statistical measures produced by BEA are used by Federal, state, and local governments for budget development and projections; by the Federal Reserve for monetary policy; by the business sector for planning and investment; and by the public to understand the performance of the American economy. BEA is under the supervision of the Department of Commerce's Under Secretary for Economic Affairs; the Bureau of the Census, which is already designated as a separate component in appendix B to part 2641, is the other bureau supervised by the Under Secretary for Economic Affairs.

According to the Department of Commerce, BEA is responsible for exercising functions that are distinct and separate from the Department of Commerce and the function of other designated components within the agency. The office operates as a statistical agency, and the subject matter and activities of the office are distinct from that of every other component within the Department; other offices and components do not generate similar economic data. BEA is further insulated from other components of the Department of Commerce because much of the economic data collected by BEA is "embargoed" or closely-held until it is released at specified times. BEA is also comparable in size to other components that have been designated by the Department of Commerce in appendix B to part 2641. In light of the distinct and separate functions of BEA, there is no potential for the use of undue influence or unfair advantage based on based on past Government service.

Accordingly, OGE is proposing to grant the request of the Department of Commerce and amend the listing in appendix B to part 2641 to designate the Bureau of Economic Analysis as a new component for purposes of 18 U.S.C. 207(c).

As indicated in 5 CFR 2641.302(f), a designation “shall be effective on the date the rule creating the designation is published in the FEDERAL REGISTER and shall be effective as to individuals who terminated senior service either before, on or after that date.” Initial designations in appendix B to part 2641 were effective as of January 1, 1991. The effective date of subsequent designations is indicated by means of parenthetical entries in appendix B. The new component designations made in this proposed rule – for VETS and BEA – would be effective on the date the final rule is published in the FEDERAL REGISTER; the component designation of FinCEN remains in effect as of the original designation date, January 30, 2003.

II. Matters of Regulatory Procedure

Regulatory Flexibility Act

As Director of the Office of Government Ethics, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this proposed rule will not have a significant economic impact on a substantial number of small entities because it affects only Federal departments and agencies and current and former Federal employees.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply to this proposed rule because it does not contain information collection requirements that require the approval of the Office of Management and Budget.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. chapter 25, subchapter II), this proposed rule would not significantly or uniquely affect small governments and will not result in increased expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (as adjusted for inflation) in any one year.

Congressional Review Act

The proposed rule is not a major rule as defined in 5 U.S.C. Chapter 8, Congressional Review of Agency Rulemaking.

Executive Orders 13563 and 12866

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select the regulatory approaches that maximize net benefits (including economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. In promulgating this rule, the Office of Government Ethics has adhered to the regulatory philosophy and the applicable principles of regulation set forth in Executive Orders 12866 and 13563. This proposed rule has not been reviewed by the Office of Management and Budget under Executive Order 12866 because it is not a “significant” regulatory action for the purposes of that order.

Executive Order 12988

As Director of the Office of Government Ethics, I have reviewed this proposed rule in light of section 3 of Executive Order 12988, Civil Justice Reform, and certify that it meets the applicable standards provided therein.

List of Subjects in 5 CFR Part 2641

Conflict of interests, Government employees.

Approved: February 3, 2020

Emory Rounds

Director,

Office of Government Ethics.

Accordingly, for the reasons set forth in the preamble, the Office of Government Ethics proposes to amend 5 CFR part 2641, as set forth below:

PART 2641—POST-EMPLOYMENT CONFLICT OF INTEREST RESTRICTIONS

1. The authority citation for part 2641 continues to read as follows:

Authority: 5 U.S.C. App. (Ethics in Government Act of 1978); 18 U.S.C. 207; E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

2. Appendix B to part 2641 is amended by revising the listings for the Department of Commerce, the Department of Labor, and the Department of the Treasury to read as follows:

Appendix B to Part 2641 – Agency Components for Purposes of 18 U.S.C. 207(c)

* * * * *

Parent: Department of Commerce

Components:

Bureau of the Census.

Bureau of Economic Analysis (effective upon publication of the final rule in the
FEDERAL REGISTER).

Bureau of Industry and Security (formerly Bureau of Export Administration) (effective
January 28, 1992).

Economic Development Administration.

International Trade Administration.

Minority Business Development Agency (formerly listed as Minority Business
Development Administration).

National Institute of Standards and Technology (effective March 6, 2008).

National Oceanic and Atmospheric Administration.

National Technical Information Service (effective March 6, 2008).

National Telecommunications and Information Administration.

United States Patent and Trademark Office (formerly Patent and Trademark Office).

* * * * *

Parent: Department of Labor

Components:

Bureau of Labor Statistics.

Employee Benefits Security Administration (formerly Pension and Welfare Benefits
Administration) (effective May 16, 1997).

Employment and Training Administration.

Mine Safety and Health Administration.

Occupational Safety and Health Administration.

Office of Disability Employment Policy (effective January 30, 2003).

Office of Federal Contract Compliance Programs (effective December 29, 2016).

Office of Labor Management Standards (effective December 29, 2016).

Office of Workers' Compensation Programs (effective December 29, 2016).

Pension Benefit Guaranty Corporation (effective May 25, 2011).

Veterans' Employment and Training Service (effective upon publication of the final rule in the FEDERAL REGISTER).

Wage and Hour Division (effective December 29, 2016).

* * * * *

Parent: Department of the Treasury

Components:

Alcohol and Tobacco Tax and Trade Bureau (effective November 23, 2004).

Bureau of Engraving and Printing.

Bureau of the Fiscal Service (effective December 4, 2014).

Comptroller of the Currency.

Financial Crimes Enforcement Network (FinCEN) (effective January 30, 2003).

Internal Revenue Service.

United States Mint (formerly listed as Bureau of the Mint).

[FR Doc. 2020-02395 Filed: 2/6/2020 8:45 am; Publication Date: 2/7/2020]